

PTO/SB26 (9-04)

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# TERMINAL DISCLAIMER TO OBLIVATE A DOUBLE PATENTING REJECTION OVER A "PRIOR" PATENT

Docket Number (Optional)

CD0787Q1

In re Application of: Andrews et al.Application No.: 10/786,886Filed: 02/25/2004For: Crystalline antifungal polymorph

The owner, Schering Corporation, of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term prior patent No. 6,713,481, as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later:

- expires for failure to pay a maintenance fee;
- is held unenforceable;
- is found invalid by a court of competent jurisdiction;
- is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;
- has all claims cancelled by a reexamination certificate;
- is released; or
- is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submission on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record. Reg. No. 45,997

Sandy Zaradic  
 Signature

11/22/04

Date

Sandy Zaradic

Typed or printed name

908-298-7221

Telephone Number

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) included.

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- Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).  
 Form PTO/SB 26 may be used for making this certification. See MPEP § 324.

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to be (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.1 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and suggestions for reducing this burden, should be sent to the Chief Information Officer, Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1460, Alexandria, VA 22313-1460.

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FEE VALUE ACCOUNTABILITY	
DEPOSIT ACCOUNT NO.	
19	0365
FEE CODE	VALUE FURNISHED
1814	110

06/12 \* RCVO AT 11/22/2004 4:37:28 PM (Eastern Standard Time) \* SVR:USPTO-EFXXF-1A \* DBS:07/29306 \* CSID:908 298 5405 \* DURATION (min-ss):03-34

06/2004.DWILLIA4 00000005 190365 10786886

FC:1814

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# FEE TRANSMITTAL for FY 2005

Effective 10/01/2004, Patent fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (g) 110.00

## Complete If Known

Application Number 10/786,886  
Filing Date 02/25/2004  
First Named Inventor Andrews et al.  
Examiner Name Bernhardt, Emily B.  
Art Unit 1624  
Attorney Docket No. CD0787Q1

## METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

☒ Deposit Account:

Deposit Account Number 19-0365  
Deposit Account Name Schering-Plough Corporation

The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments

☒ Charge any additional fee(s) or any underpayment of fee(s)

☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

## FEE CALCULATION

### 1. BASIC FILING FEE

Fee Code (S)	Fee Description	Fee Paid
1001 790	2001 393 Utility filing fee	
1002 350	2002 175 Design filing fee	
1003 550	2003 273 Plant filing fee	
1004 780	2004 396 Release filing fee	
1005 160	2005 80 Provisional filing fee	

SUBTOTAL (f) \$

### 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims  -20\* =  X   
Independent Claims  -3\* =  X   
Multiple Dependent

Large Entity Fee Code (S)	Small Entity Fee Code (S)	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 88	2201 44	Independent claims in excess of 3
1203 300	2203 150	Multiple dependent claim, if not paid
1204 86	2204 44	Release independent claims over original patent
1205 18	2205 9	Release claims in excess of 20 and over original patent

SUBTOTAL (g) \$

\* or number previously paid, if greater; For Release, see above

## FEE CALCULATION (continued)

### 3. ADDITIONAL FEES

Large Entity Fee Code (S)	Small Entity Fee Code (S)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 60	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 430	2252 215	Extension for reply within second month	
1253 980	2253 490	Extension for reply within third month	
1284 1,530	2284 765	Extension for reply within fourth month	
1255 2,060	2255 1,040	Extension for reply within fifth month	
1401 340	2401 170	Notice of Appeal	
1402 340	2402 170	Filing a brief in support of an appeal	
1403 300	2403 150	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,330	2453 665	Petition to revive - unintentional	
1501 1,370	2501 685	Utility issue fee (or release)	
1502 480	2502 240	Design issue fee	
1503 680	2503 330	Plant issue fee	
1440 130	1440 130	Petitions to the Commissioner	
1807 60	1807 60	Processing fee under 37 CFR 1.17(c)	
1808 180	1808 180	Submission of Information Disclosure Sheet	
8021 40	8021 40	Recording each patent assignment per properly (minus number of properties)	
1809 700	2009 350	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 780	2810 390	For each additional invention to be examined (37 CFR 1.129(b))	
1801 780	2801 390	Request for Continued Examination (RCE)	
1802 900	2802 900	Request for expedited examination of a design application	
		Other fee (specify) Terminal Disclaimer over Prior Patent	110.00
		* Reduced by Basic Filing Fee Paid	
		SUBTOTAL (h) (i) \$	110.00

## SUBMITTED BY

Name (Print/Type) Sandy Zaradic Registration No. 45,997 Telephone 908-298-7221  
Signature *S. Zaradic* Date November 23, 2004

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